CITIZENS AGAINST GOVERNMENT WASTE

Thomas A. Schatz
President

Chairman Julius Genachowski
Commissioner Meredith Attwell Baker
Commissioner Mignon Clyburn
Commissioner Michael J. Copps
Commissioner Robert McDowell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Genachowski and Commissioners:

Citizens Against Government Waste (CAGW) is writing this letter in response to the Federal Communications Commission's (FCC) MB Docket No. 10-71 request in the matter of amendment of the commission's rules governing retransmission consent. CAGW is a private, non-partisan, nonprofit organization representing more than one million members and supporters nationwide.

Millions of consumers have fallen victim to tense negotiations between broadcasters and cable providers. All too often broadcasters have used their upper hand to "hold hostage" must-see-tv in an effort to force cable providers to pay exorbitant fees or carry extra channels on its basic tier. In October 2010, more than three million Cablevision customers in the New York area experienced a 16-day blackout of Fox programming which prevented them from watching the first two games of the World Series. In March 2010, New York customers lost their ABC station right before the Oscars. Viewers missed the first 15 minutes of the awards show before Cablevision reached a deal with Disney.

Cable providers have little choice but to succumb to broadcasters' demands, or else lose millions of customers. As a result, consumers not only experience a programming "blackout" until a deal has been reached, but also see an increase in their cable bill as broadcasters' ransoms are passed off in the form of higher rates.

The twisted negotiations process between broadcasters and cable providers is an outgrowth of the antiquated retransmission framework. In 1992, Congress amended the Communications Act to give broadcasters the upper hand in negotiations with monopoly cable providers, granting broadcasters the right to choose between guaranteed carriage or insisting that multichannel video programming distributors (MVPD) obtain and pay for a station's consent to retransmit the station's signal to local subscribers. The law allows broadcasters to make a new election between these two options every three years.

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The marketplace, however, has greatly evolved since 1992. Broadcasters no longer deal with a cable monopoly; on the contrary, broadcasters can often chose among multiple providers ranging from cable to satellite to new fiber optic networks. As a result, broadcasters now brandish enormous negotiating power under old retransmission consent rules; this power has led to service disruptions and increases in the cost of service for consumers.

Consumers should not have to be victimized by a system that allows broadcasters to pit one MVPD against another, threatening to withhold consent for its signal if demands are not met. Old retransmission consent rules inhibit the free market, reduce competition by undercutting smaller providers' ability to compete on price, increase costs for consumers, and frustrate millions of Americans by shutting off popular programming at peak viewing periods.

Another contributing factor to the strained negotiations is the network non-duplication rule, which prevents cable companies from negotiating with broadcasters outside of a local market. Cable companies are restricted to dealing with a single local station, despite the fact that other external markets might carry the same programming and are willing to negotiate a lower price. It is ironic that as the cable marketplace has grown and become more competitive over time, FCC regulations have actually restricted a competitive negotiation process.

The time is ripe to revisit these poorly-structured rules and revise them to reflect the modern, competitive pay television marketplace. CAGW urges the FCC to reform and streamline the rules governing negotiations between broadcasters and cable providers to reflect the competitive cable industry and to ensure a fair system that does not inherently pick winners and losers.

Government rules and regulations should drive businesses into the twenty-first century, not hold them back. The FCC should work toward a solution that revises old retransmission consent rules and the entire framework of broadcaster regulatory benefits in order to reflect the modern marketplace and limit government involvement and favoritism in private negotiations. A government policy that allows one private industry to blackmail another, while forcing consumers to bear the brunt of blackouts and price gouging, is a policy in desperate need of repair.

Sincerely,

Thomas Schatz